IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4880 OF 2005

Sambhaji Haribhau Kudale ...Applicant

vs.

State of Maharashtra ...Respondent

Mr.Uday Warunjikar with Mr.Balasaheb Bandal and Ms Pallavi Dharmadhikari for the Applicant
Ms M.M.Deshmukh, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 29,2005

P.C.:

1. Heard Advocate for the Applicant and the learned A.P.P. for State. The applicant is an accused in an offence registered under Sections 3(1), (i), (ii) as well as Section 4 of the Maharashtra Control of Organised Crimes Act,1999 (hereinafter referred to as the said Act of 1999).

2. The main submission made by the learned Counsel for the Applicant is that when the Court considers the question of granting temporary bail in extraordinary circumstances, stringent requirements of Sub Section 4 of section 21 of the said Act of 1999 will not apply. His submission is that the decision of the learned Single Judge reported in 2004 (11) LJSOFT (URC) page No.6 (Anil Umrao Gote vs. State of Maharashtra) needs reconsideration.

3. The learned Counsel for the Applicant submitted that even in a case where provisions of the said Act of 1999 are applicable, the Court retains power of granting temporary bail even in a case where requirements of sub section 4 of Section 21 are not satisfied. He placed reliance on order passed by the Apex Court dated 4th November 2004 in the case of Ranjeetsing B. Sharma in SLP (Cri.) 3897 of 2004. He has also invited my attention to a decision of the Apex Court reported in 2005 (2) Crimes page 168 (SC) (Ranjitsing Brahmajeetsingh Sharma Vs. State of Maharashtra & Another). He submitted that in view of law laid down by the Apex Court, there is no restriction on power of the Court to grant a temporary bail even in a case where the provisions of the said Act of 1999 have been applied. He has also invited my attention to Universal Declaration of Human Rights, 1948 and submitted that in the case of the Applicant who was required to apply for temporary bail on the ground of demise of his brother, stringent provisions of Sub Section 4 of Section 21 cannot be applied.

4. The learned A.P.P. opposed the prayer made by the learned Counsel for the Applicant and submitted that law on this point is very clear which needs no reconsideration.

5. Before I deal with the submissions made by the learned Counsel for the Applicant, it will be necessary to refer to

the order dated 4th August 2005 passed by this Court. Under the said order, the Applicant was permitted to attend to obsequies under a police escort. In view of the said order, now the requirement of releasing the Applicant on temporary bail does not subsist. However, I have dealt with the submissions advanced by the learned Counsel for the Applicant.

6. It is necessary to make a reference to a decision of the learned Single Judge in case of Anil Gote (supra). After considering the various decisions of the Apex Court, including the decision reported in A.I.R. S.C.1998 page no.922 (Usmanbhai Dawoodbhai Memon and others vs. State of Gujrat) the learned Single Judge held that the Court is having jurisdiction to release the accused on bail only on fulfilment of condition under Section 4 (21) of the said Act of 1999.

7. The learned Single Judge held that the High Court or the Special Court cannot release an accused on interim bail or temporary bail if the requirements of Section 21 (4) are not fulfilled. A view is also taken that when there is a specific provision under the statute, it is not open to the High Court to invoke power under Section 482 of the said Code.

8. A reference will have to be made to the order of the Apex Court dated 4th November 2004 passed in case of Ranjeetsing Sharma. On plain reading of the order, it appears that the

issue involved in this application was neither canvassed before the Apex Court nor decided by the Apex Court. It is well settled position that a Judgment is an authority for what it decides and it cannot be read as an authority for what follows from the Judgment. Therefore, reliance placed on the said order will not help the Applicant. In a recent decision of the Apex Court in case of Ranjitsing (supra) considering the scope of power under Section 21(4) of the said Act of 1999 is considered. In paragraph No.43 the Apex Court observed thus :

"43. We are furthermore of the opinion that the restrictions on the power of the Court to grant bail should not be pushed too far. If the Court having regarding to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the Court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Indian Penal Code may debar the Court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What

would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the commission of an organised crime either directly or indirectly. the Court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine quo non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The Court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision."

9. It will be necessary to refer to paragraph No.49 of the said decision which read thus :

"49. The wording of Section 21(4), in our opinion, does not lead to the conclusion that the Court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If

such a construction is place, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the Applicant. Such cannot be the intention of the Legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the Court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the Court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since, it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence. "

10. On plain reading of the said decision of the Apex Court which considers the scope of Sub Section 4 of Section 21, it appears that the Apex Court has not come to the conclusion

that the bail can be granted without taking recourse to Section 21 (4). The said decision cannot be read as an authority for the proposition that independent of a power under Section 21(4) of the said Act of 1999, there is a power vesting either in the Special Court or in the High Court to grant temporary bail. In my view, the decision in the case of Ranjitsing will not help the Applicant.

11. At this stage a reference will have to be made to the decision of the Apex Court which deals with the powers of the Court for grant of bail under the provisions of N.D.P.S. Act,1985. Section 37 of the said Act of 1985 provides for similar restricted power to grant bail.Section 37 read thus:

"37. Offences to be cognizable and non-bailable.-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for a term of imprisonment of five years or more under this Act shall be released on bail or on his own bond unless -

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) **where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.**

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail."

(emphasis supplied)

In a decision of the Apex Court reported in (1999) 9 S.C.C. page 429 (Union of India Vs. Ram Samujh and another) and in particular paragraph Nos.7 and 8 the Apex Court while referring to Section 37 held as under :

"7. **It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed.** It should be borne in mind that in a murder case, the accused commits murder of one or two person, while those persons who are dealing in

narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved...

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful

socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament after due deliberation has amended."

At this stage a reference will have to be made to the another decision reported in 2001 7 S.C.C. page 673 (State of M.P. Vs. Kajad). The Apex Court in paragraph No.5 has held thus :

"5. The purpose for which the Act was enacted and the menace of drug trafficking which it intends to curtail is evident from its scheme. A perusal of Section 37 of the Act leaves no doubt in the mind of the court that a person accused of an offence, punishable for a term imprisonment of five years or more, shall generally be not released on bail. Negation of bail is the rule and its grant an exception under sub-clause (ii) of clause (b) of Section 37(1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the

conditions for granting the bail, specified in clause (b) of sub-section (1) of section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for.

12. Thus, the power of the Special Court or the High Court to grant bail is circumscribed by Sub Section 4 of Section 21 of the said Act of 1999. It follows that once a statute mandates that unless stringent conditions incorporated in the statute are complied with accused cannot be enlarged on bail, requirement of statute will apply even to the application for temporary bail. In the light of law laid down by the Apex Court, the Applicant cannot rely upon the Universal Declaration of Human Rights, 1948. In my view, the decision in case of Anil Gote(supra) does not require any reconsideration and the said decision is the settled position of law.

13. Accordingly, the application is disposed of.

JUDGE